STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2003-348

June 15, 2004

PUBLIC UTILITIES COMMISSION
Investigation Into the Conservation Fund Assessments of the COUs

EXAMINER'S REPORT

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NOTE: This Report contains the recommendation of the Hearing Examiner. Although it is in the form of a draft of a Commission Order, it does not constitute Commission action. Parties may file responses or exceptions to this Report on or before **June 28, 2004**. The Commission expects to deliberate this matter on **July 7, 2004.**

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## I. SUMMARY

We opened this investigation to consider whether consumer-owned transmission and distribution utilities (COUs) should pay conservation assessments at less than the rate set for other transmission and distribution (T&D) utilities. After considering the COUs' arguments, we decide that the COUs should pay conservation assessments at the same rate as other T&D utilities.

As part of this investigation, the two largest customers served by a COU, Madison Paper Industries (MPI) and Domtar Industries, Inc. (Domtar), requested lower conservation assessments for the COUs that serve them, Madison Electric Works (MEW) and Eastern Maine Electric Cooperative, Inc. (EMEC). We do not agree that the circumstances surrounding either MPI or Domtar justify lower conservation assessments.

## II. BACKGROUND

Pursuant to P.L. 2002, ch. 624 (the Conservation Act or Act), the Commission has developed and implemented electric conservation programs. The Commission is authorized to pay for the programs, including any necessary administrative costs, by assessing and collecting funds from the T&D utilities.

We implemented interim programs during 2002-2003 and began assessing T&D utilities in June 2002. Initially, we decided to assess the T&D utilities the amount already included in each T&D utility's rates. This decision resulted in disparate treatment for Central Maine Power Company (CMP), as CMP's rates were set at the statutory maximum, 1.5 mils/kWh, and all other T&Ds were set at the statutory minimum, 0.5% of T&D revenue. *Order on Interim Funding*, Docket No. 2002-161 (June 13, 2002).

To transition from interim programs to "on-going" programs, the Act imposes two additional requirements in setting funding levels: to assess based on the characteristics of each T&D's service territory, and to assess in a way that is "proportionally equivalent" among all the T&D utilities, unless the Commission finds that a different amount is justified. 35-A M.R.S.A. § 3211-A(4)(A) and (D). By Order on April 4, 2003, we decided to assess all T&D utilities at the statutory maximum rate, 1.5 mils/kWh, for funding conservation programs. We found that the potential for energy efficiency is relatively proportional across T&D service territories in Maine. We also found that the achievable

potential energy savings is several times greater than the savings that could be achieved at the maximum funding level, and inferred a legislative intent in such an instance to fund at the maximum level. *Order on Conservation Program Funding,* Docket No. 2002-162 (April 4, 2003) (hereinafter the April 4 Order).

For the T&Ds that were assessed during the interim period at the statutory minimum (all but CMP), we decided for rate stability purposes to phase in the increase in the conservation assessment from the minimum to maximum. The minimum assessment of 0.5% of total revenue produced an amount that varied among these T&Ds from 0.02 to 0.73 mils per kWh. We decided that the starting point for the phase-in, effective July 1, 2003, should be 0.6 mils/kWh or the current assessment level, whichever was higher. Each assessment would increase by 0.2 mils/kWh per year until the statutory maximum of 1.5 mils per kWh is reached.

In the April 4 Order, we discussed the arguments made by Madison Electric Works (MEW), Madison Paper Industries (MPI) and Eastern Maine Electric Cooperative (EMEC) that the MEW and EMEC service territories warranted smaller assessments. Ultimately, we concluded that we had insufficient information to justify a lower assessment. We acknowledged, however, that due to the nature of the Docket 2002-162 proceeding, there was no detailed, individualized examination of the COU service territories. Accordingly, we opened this investigation to give the COUs another opportunity to demonstrate facts or present arguments that justify different conservation assessments for their service territories.

In separate orders on reconsideration, we delayed the implementation of the April 4 Order as to MPI and Domtar, but not the other ratepayers of MEW and EMEC. In *Order on Reconsideration,* Docket No. 2002-162 (June 30, 2003), we decided that, because the 0.6 mils/kWh assessment would amount to more than a 66% increase to MPI, it would be equitable to exempt MPI from the conservation assessment surcharge until this investigation was concluded. In *Order on Reconsideration,* Docket No. 2003-515 (Oct. 10, 2003), we decided that Domtar's circumstances are sufficiently similar to MPI's that simplicity and equity justify exempting Domtar from the effect of the assessment surcharge, pending the conclusion of this investigation. Accordingly, we have assessed MEW and EMEC at 0.5% of the annual revenue from MPI and Domtar, respectively, and at 0.6 mils/kWh for all other kWh sold.[1]

All COUs were made parties to the investigation. In addition, the Examiner granted petitions to intervene on behalf of CMP, the Office of the Public Advocate (OPA), MPI and Domtar. As an initial matter, the Examiner directed that the parties submit in writing any facts and reasons that justify lower conservation assessments for any COU service territory.

Initial filings were made by Houlton Water Company, Fox Islands Electric Cooperative, Inc. (FIEC), Van Buren Light and Power District, Kennebunk Light and

[1] MEW has imposed a 0.6 mils/kWh surcharge on all customers other than MPI. EMEC has imposed a 0.6 mils/kWh surcharge on all customers other than Domtar.

Power District (KLPD), EMEC, Domtar, MEW and MPI. Responsive filings were made by the OPA and CMP.

After these filings, and at the request of the parties, significant efforts were devoted to an informal settlement process. Ultimately, a comprehensive settlement was not reached.[2] Although a comprehensive settlement was not reached, [name parties to partial stipulation] reached a partial settlement, concerning the conservation assessment for the two "island" COUs, Fox Island Electric Cooperative, Inc. (FIEC) and Swans Island Electric Cooperative (SIEC). This stipulation was filed with the Commission on _____.[3] None of the non-signing parties oppose it. The terms of the stipulation provide for FIEC and SIEC to be assessed at 0.6 mils/kWh and to remain at that assessment rather than be subject to the step increases provided for in the April 4 Order.

As to the other COUs, the parties agreed to the proper procedure for the remainder of the investigation. The parties agreed that the initial and responsive filings, and the opportunity to file written exceptions to the Examiner's Report constituted

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[2] Because the issues raised by MPI and Domtar were similar to issues raised in Docket No. 2003-516, the investigation into whether the transmission and subtransmission level customers of the Investor-owned T&D utilities pay for conservation assessments in their rates, the processing of this COU investigation was delayed pending the resolution of Docket No. 2003-516. The IOUs investigation has now been completed, resulting in changes to the unbundled distribution and stranded costs rates to reflect the fact that all customers' rates include the costs associates with the conservation assessments, and that such costs will be recovered on a uniform per kWh basis. *Order Approving Partial Stipulation,* Docket No. 2003-516 (June 10, 2004).

[3] Examiner's Note: As the parties have orally agreed to the partial settlement, the Examiner assumes a written stipulation will be filed to reflect that fact.

sufficient process for the COUs and other parties to present their case for lower assessments to the Commission.[4]

## III. POSITION OF THE PARTIES

In its initial filing, Houlton Water Company (HWC) states that the OPA-sponsored studies (the Exeter and Optimal Reports) relied on by the Commission in its April 4 Funding Order failed to account for economic disparity between northern Maine and southern Maine. Houlton asserts that it is an unfair burden to require HWC to fund a statewide program at the same level as the T&D utilities serving the more prosperous areas of the state. Moreover, the conservation assessment represents a 6.7% increase to HWC compared to smaller increases to CMP (3.4%) and MPS (2.7%). Thus, HWC is concerned that it cannot afford the program funded at the maximum level, especially given that it believes that its customers will not achieve the maximum benefit because of earlier conservation efforts implemented by HWC. HWC describes the transmission and distribution system upgrades to reduce line losses and programs undertaken to assist end-users such as energy efficient streetlights, free hot water heater blankets and residential weatherization audits.

HWC asserts that the Commission placed greater emphasis on the fourth statutory criterion in reaching a funding decision, proportional equivalency, than on the first statutory criterion, the requirement to consider the relevant characteristics of the

[4] At the request of some of the parties, the Commission also held an oral argument after exceptions to the Examiner's Report were filed.

T&D's service territory, including the needs of customers. HWC states that the first criterion should take priority over the fourth, because proportional equivalence cannot be used to justify an increase in a T&D's conservation assessments.

HWC also attaches a letter from the Plant Manager of the Louisiana-Pacific Corp. facility in New Limerick. The Plant Manager states that while HWC's rates are low compared to other Maine T&D utilities, its rates are higher than the rates that Louisiana-Pacific's competitors receive in Canada and other states. Therefore, an additional 1.5 mils/kWh will damage Louisiana-Pacific's already precarious competitive position. Moreover, the Plant Manager states the Louisiana-Pacific will not be able to recoup its conservation expenses because of the significant energy conservation measures installed in the plant over the last ten years. The plant manager states that based on Louisiana-Pacific's analysis, "there is very little remaining in the plant to be done for cost effective energy conservation." HWC concludes that its assessment should be capped at 1 mil/kWh for customers that use less than 400 kW and remain at 0.6 mils/kWh for customers that use more than 400 kW.

Van Buren Light and Power District states that it should be capped at 0.6 mils/kWh. Van Buren cites the large percentage increase that the increased assement represents to its customers. Additionally, Van Buren believes that its customers will not receive benefits as great as the costs of the larger assessments.

Kennebunk Light and Power District (KLPD) asserts that the conservation assessment represents a thirteen percent increase in its rates. In contrast, 1.5 mils/kWh in the CMP service territory is only two to three percent of CMP's rate. KLPD also expresses concern that 27% of its assessment will be paid by its industrial class, the class of customers whose electricity demand is most elastic in KLPD's view.

KLPD instituted a variety of energy conservation programs in 1970s and 1980s. Due to these programs, KLPD does not believe cost effective conservation in the amount of its assessment is available in its service territory. KLPD requests that its customers be assessed at the minimum level, one-half of one percent of revenue. As a compromise, KLPD suggests that its industrial class of customers be assessed at the minimum, and all other customers be assessed at the current 0.6 mils/kWh without the projected step increases.

In its initial filing, MEW states that it has changed its position. MEW no longer requests for its assessment to be the minimum allowed for all customers. It is willing to accept the phased-in 1.5 mil/kWh rate for its residential and small commercial customers. For Madison Paper (MPI), however, MEW states that it should be assessed at the minimum 0.5% of revenue rather than the phased-in 1.5 mils/kWh for the kWh sold to MPI. MEW states that MPI already has installed many conservation measures, and faces a difficult competitive climate, as do all paper mills in Maine.

MPI submits that Maine law compels a decision by the Commission that MEW should be assessed at the statutory floor of 0.5% of total T&D revenue. The decision is compelled because of the relevant (and unique) characteristics of the MEW service territory. MPI constitutes almost all of MEW's load (87% to 89% in recent years). No other T&D service territory is dominated by its largest customer to a similar degree. In addition, MPI asserts that it is already strongly committed to, and has invested in, energy conservation. MPI cites a FERC order in a hydropower relicensing proceeding involving MPI's facility in Madison and Anson that concludes that MPI, in the context of Federal Power Act Section 10(a)(2)(c), is making satisfactory efforts to conserve electricity. MPI therefore concludes that there is no need for Commission-implemented conservation programs for MPI's share of MEW's load.

As a transmission voltage customer, MPI contributed the entire cost of the transmission line that MEW uses to serve MPI. Because the transmission line is not tied to MEW's distribution system, MPI asserts that it cannot receive any system benefits from conservation programs directed to MEW's other customers. In MCI's view, all of these relevant characteristics of the MEW service territory confirm the appropriateness of the statutory floor as the conservation assessment level for MEW.

MPI points out that the Commission assessments must result in conservation expenditures that are based on the relevant characteristics of each T&D service territory. MPI argues that unlike the requirement that assessments be "proportionally equivalent" which the Commission may disregard of if it "finds a different amount is

justified" 35-A M.R.S.A. § 3211-A(4)(A), the Act does not give the Commission the authority to disregard the relevant circumstances of T&D service territories. MPI concludes that the relevant circumstances of the MEW service territory described above compel a conclusion that the statutory floor is proper for MEW.

EMEC asserts that the Commission failed to consider the relevant characteristics of its service territory when the Commission decided conservation funding in the April 4 Order. Instead, in EMEC's view, the Commission decided to assess the statutory maximum to achieve state-wide or proportional equivalency, despite the statutory requirement that any increase in an assessment could not be imposed to achieve proportional equivalence.

According to EMEC, the Commission ignored relevant characteristics of EMEC. The April 4 Order relies on the Exeter Study for potential electric conservation in Maine. The Exeter Study, in turn, was dominated with information about CMP's service territory. There was no attempt to determine whether EMEC's large, very rural service territory is comparable to CMP's. EMEC cites some differences that should have been considered. For example, EMEC states that its average annual usage by residential consumers is only 88% of CMP's (6172 kWh/year compared to 7000/kWh/year). Also, Exeter used CMP's appliance saturation rates to estimate the potential residential conservation in EMEC's service territory. EMEC questions the assumption that CMP's saturation rates are similar to EMEC's given the different demographics and economics of the two service territories.

EMEC concludes that the Commission has over-estimated the potential savings from residential customers in the EMEC service area. It argues similar assumptions in the industrial and commercial sectors, such as the 2% annual growth rate in the commercial and public authority sectors, do not accurately reflect the EMEC service territory, resulting in conservation potential being overstated.

EMEC also claims that the potential for conservation is diminished in its service territory because conservation measures will be less accessible to its customers due to the large rural nature of the service territory. In addition, due to the rural and low income nature of the service area, EMEC believes that the Commission should measure the amount of conservation measures actually implemented by consumers in the service area before increasing the conservation assessment to EMEC.

EMEC urges the Commission, regardless of its decision as to proper funding levels for EMEC's other ratepayers, that it not increase the funding level for Domtar. The fully-phased in assessment to Domtar would increase its rates by $46,500. Because of the competitive forces faced by the paper mill, any increase is a threat to viability of the mill. In addition, EMEC states that Domtar has already engaged in substantial conservation efforts and therefore will not benefit from the Commission-sponsored programs.

Domtar provides a list of eleven projects that have been implemented in the last three years and were designed to save energy. Domtar provides estimates of the dollar savings and costs of each of the projects, ranging in savings of up to $500,000/year and costs of up to $950,000. Domtar asserts that it is unfair to increase its assessment because it has already paid to install cost-effective conservation. It should not have to pay again. Moreover, as the Woodland facility must compete with other mills in the U.S. and Canada, any increase in its electricity rates may result in production shifts away from Woodland to other locations.

The OPA and CMP filed responsive filings. The OPA urges the Commission to impose the funding levels as adopted in the April 4 Order. In its view, the Act creates a presumption that all ratepayers in Maine should contribute to conservation programs and be eligible for programs. To preserve fairness, the OPA suggests that any deviation from state-wide equity should be made on a utility-wide basis, or across a given class of customers regardless of utility.

Except for Fox Island (FIEC) and Swan's Island Electric Cooperative (SIEC), OPA asserts that no COU has presented facts that overcome the presumption that all Maine customers should contribute to the Conservation Fund at the same rate. The Optimal and Exeter studies demonstrated, and the Commission found, that the potential for cost-effective conservation is so large that prior efforts could not have come close to exhausting the potential.

FEIC and SIEC should be treated differently due to the high electricity rates in those service areas. The OPA would also leave open the possibility that the three largest COU customers, MPI, Domtar and Louisiana-Pacific, should be treated differently. The OPA stated that those customers should be treated in the same manner as similarly situated transmission and sub-transmission voltage customers of the Investor-owned utilities (IOUs) are treated (in Docket No. 2003-516).

CMP states that the Commission decided to implement energy efficiency programs on a state-wide basis rather than on a service territory basis. Without an equal funding level, CMP opines that a state-wide program would result in unfair cross-subsidization between service territories. CMP uses the Commission's residential ENERGYSTAR lighting program as an example. If the Commission allowed a COU to pay a lower assessment, residential customers of that COU could still go to the participating retail stores and receive the program's instant rebates. In that instance, CMP asserts that CMP is paying for the COU's participation in the program. Furthermore, CMP states, if the Commission excluded residential customers of the COU from participating in the lighting program, the program is no longer state-wide while the administrative burden and costs of the program are increased.

CMP asserts that the Exeter and Optimal studies did not provide any basis for treating the COUs differently. CMP also argues that CMP has spent more on conservation program activities during the last 15 to 20 years than other Maine utilities. Thus, CMP has met more of its customers' needs, and the COUs cannot justify lower

assessments than CMP's because of the needs of the COUs' customers. CMP concludes by asking that the April 4 Order not be changed.

## IV. PARTIAL STIPULATION

All parties either join or do not oppose the partial stipulation by which the island electric cooperatives (FIEC and SIEC) will be assessed less than the other T&D utilities in the State. If we approve the stipulation, FIEC and SIEC will continue to be assessed at 0.6 mils/kWh, rather than be subject to the 0.2 mil/kWh step increase every July 1 until the statutory maximum is reached.

In our April 4 Order (at p. 7), we noted that FIEC and SIEC already have rates higher than the other T&D utilities and suggested that such high rates may justify lower assessments for those service territories. The stipulating parties have pursued our suggestion and now decide that the island cooperatives' high rates justify a lower conservation assessment. The parties decide that 0.6 mils/kWh for the island cooperatives compared to the fully phased-in 1.5 mils/kWh rate for the other T&D utilities is the proper discount to the island cooperatives.

To accept a stipulation the Commission must find that:

1. the parties joining the stipulation represent a sufficiently broad spectrum of interests that the Commission can be sure that there is no appearance or reality of disenfranchisement;

2. the process that led to the stipulation was fair to all parties; and

3. the stipulation results is reasonable and is not contrary to legislative mandates.

See *Central Maine Power Company, Proposed Increase in Rates,* Docket No. 92-345(II), Detailed Opinion and Subsidiary Findings (Me. P.U.C. Jan. 10, 1995), and *Maine Public Service Company, Proposed Increase in Rates (Rate Design),* Docket No. 95-052, Order (Me. P.U.C. June 26, 1996). We have also recognized that we have an obligation to ensure that the overall stipulated result is in the public interest. See *Northern Utilities, Inc., Proposed Environmental Response Cost Recovery,* Docket No. 96-678, Order Approving Stipulation (Me. P.U.C. April 28, 1997).

[All parties other than _____] have entered into the Partial Stipulation. These parties represent a broad spectrum of interests and we are satisfied that there has been no disenfranchisement, nor any appearance of disenfranchisement here.

The Partial Stipulation was reached through a series of settlement conferences noticed to all parties and conducted by our Advisory Staff. [Moreover, the parties who

do not join the Stipulation do not oppose it.] We are thus satisfied that our second criterion has also been satisfied.

We agree that high rates for FIEC and SIEC, the T&D utilities with the highest rates in the State, justify different conservation assessments. The parties recommend a discounted assessment of 0.6 mils/kWh. At 40% of the maximum rate, 0.6 mils/kWh is a significant portion of the maximum rate, but still offers a substantial discount to alleviate the high rate problem. We conclude that the partial stipulation provides a reasonable resolution to resolve the dispute about the proper assessment on the island cooperatives, and is in the public interest.

## V. THE OTHER COU CONSERVATION ASSESSMENTS

In our April 4 Order, we summarized the standards, as set out in the Conservation Act, by which we are to make our conservation funding decisions:

> The Act establishes minimum (0.5% of T&D revenue) and maximum 1.5 mils.kWh) levels, but provides only limited guidance on how the Commission should decide on a specific assessment within the authorized range. We must equalize the level of funding among T&D utilities to achieve the so-called "proportional equivalence," unless we justify different treatment. 35-A M.R.S.A. § 3211-A(4)(D). Our obligation to equalize is further qualified by the admonition that we cannot use equalizing

> contribution levels as the sole reason to increase any one utility's funding level. *Id.* In addition, we are to choose a funding level that is based on the relevant characteristics of the T&D service territory, including the needs of customers. 35-A M.R.S.A. § 3211-A(4)(A).

April 4 Order at 4-5.

We inferred a legislative intent in the Conservation Act to fund at the maximum level as long as achievable cost effective energy efficiency appears to be greater than the amount achievable at the maximum funding, absent a persuasive showing that the relevant characteristics of a utility's service territory warrant a lower assessment. *Id.* at 5.

In the April 4 Order, we agreed with the conclusion as stated in the Staff Report that the potential for energy efficiency is relatively proportional across T&D service territories in Maine, because the OPA studies of statewide conservation potential showed no significant difference between utility service territories. We also found that the OPA studies indicate a maximum achievable conservation potential that is so far above the level we can fund at the assessment ceiling that "we are left with huge room for error." *Id.* at 6. Our findings mean that there is little risk that the achievable conservation potential for any T&D utility does not support funding at the assessment ceiling.

In the April 4 Order, we addressed two claims made by the COUs in Docket No. 2002-162 for lower assessments, and were not persuaded that the claims justified lower assessments. The first claim related to the assertion that the 1.5 mil/kWh charge amounted to a significant percentage increase to some COU ratepayers. We noted that the large percentage increase only signified that the COUs started with lower rates. Lower rates did not justify lower assessments.

The second claim related to assertions that the COUs that served the stagnant economic areas of the state should receive lower assessments. We likewise dismissed this claim, because the assessments will not harm the local economies. It is the nature of cost effective conservation programs that money spent on electricity for a given level of output will decline. The assessments should enhance, not harm, economic development.

In this investigation, the reasons offered by KLPD, HWC, Van Buren, and EMEC (except as to Domtar) really amount to a repetition of the two earlier claims. We remain unpersuaded. By using a phase-in to increase to the assessment ceiling, the percentage increase in each year is significantly reduced. Low rates can justify a phase-in to the statutory maximum. They do not justify any other different treatment.

Likewise, adverse economic conditions do not justify lower assessments. While lower load growth can impact potential for energy efficiency for new construction

programs, considerable potential will still exist for energy savings at existing homes and businesses. Even in the lower growth service areas, the achievable potential conservation is sufficiently greater than the achievable conservation at the assessment ceiling. Moreover, as we stated in the April 4 Order, improving energy efficiency in the slower-growth areas of the state should improve their economic vitality. In addition, there is no equitable reason for treating customers of some COUs differently than customers of some of the IOUs when both sets of customers are located in the same area and are faced with similar economic circumstances.

Some of the COUs also assert that their own conservation efforts before Electric Restructuring were so effective that the potential in their own service territory is not sufficient to support maximum funding. We agree with CMP on this point, that CMP invested in efficiency programs to a significantly greater degree than any COU, yet the achievable potential within CMP's service territory remains significant. Therefore, there is logical reason why the COU's prior efforts would have produced less achievable potential compared to CMP. We remain convinced that significant achievable potential conservation remains in all service areas.

Some COUs assert that adverse economic conditions, as well as geographic isolation, mean that their customers will not participate in programs to the same degree, and therefore will benefit less from conservation programs, justifying lower assessments. No doubt conservation-related costs raise equity issues because not all customers benefit equally from the programs. We attempt to mitigate these concerns

by implementing a portfolio of programs so that all customers are able to participate in at least one program. We also intend that programs be designed so that the opportunity to participate in programs is equitable across service territories. We believe our programs are designed in such a manner, but we reiterate that those COU participation concerns do not justify lower assessments but more careful program design.

The remaining claim is raised by MPI, EMEC, and Domtar. That claim is that the MEW and EMEC service territories are different because MPI and Domtar are dominant, and already efficient, large customers. The presence of the large, efficient customers lowers the achievable potential conservation in the service territory, justifying the different treatment when these "relevant characteristics" are considered. Indeed, MPI asserts that these "relevant characteristics" compel a decision to lower the assessment.

Both MPI and Domtar list the conservation projects that have been installed at each facility in recent years.[5] MPI presents the most compelling situation, because it represents 85 to 90 percent of the MEW load. If MPI really had already invested in all cost effective conservation measures, the achievable potential conservation for the entire MEW service territory might not justify an assessment at the ceiling. Domtar does not have the same impact on the EMEC service territory. The conclusions about

[5] HWC on behalf of Louisiana-Pacific makes similar claims, concluding that Louisiana-Pacific should be assessed 0.6 mils/kWh rather than be subject to step-increases.

the EMEC service territory made in the OPA studies are not changed even if Domtar yields no cost effective potential.

More importantly, neither MPI nor Domtar claim that it has exhausted all potential cost effective conservation measures. Each claims that it has invested significantly in conservation so that each does not expect to be able to participate and thereby benefit from the assessment.

We are not persuaded that MPI and Domtar face a prospect of no cost effective conservation measures. The equity concerns that they raise, that they will not get to participate in programs because they have already invested in the most cost-effective measures, can be addressed through program design and not lower assessments. We should design programs such that diligent industrial customers like MPI and Domtar also have a reasonable opportunity to participate in at least one program. If we do so, we at least mitigate the equity concerns that they cannot benefit from programs.

Equity concerns also are addressed by ensuring that all customers, or at least the broadest base possible, contribute to the conservation assessment. We recently approved the stipulation in Docket No. 2003-516 that changed rate design to assure that all customers in the investor-owned utility service territories, including the large industrials, pay for their share of the conservation assessment on a uniform per kWh basis. We have implemented a portfolio of conservation programs that represent a

statewide conservation effort. We are not persuaded that MPI or Domtar affect the relevant characteristics of the service territory of MEW and EMEC such that we should deviate from the principles that all customers in Maine should have the opportunity to benefit and all customers should pay for conservation assessments on a uniform per kWh basis.

Accordingly, we

O R D E R

1. That the Partial Stipulation described above is approved and the conservation assessments of Fox Island Electric Cooperative Inc. and Swan's Island Electric Cooperative will be made in accordance with the Partial Stipulation;

2. That in all other respects, we affirm our order of April 4, 2004 in Docket No. 2002-162;

3. That the conservation assessments for Madison Electric Works and Eastern Maine Electric Cooperative shall be calculated so that all kWh sold, including those sold to Madison Paper Industries and Domtar Industries, Inc., shall be assessed

at the rates described in the April 4 Order, for effect 30 days after the date of this Order.[6]

Dated at Augusta, Maine, this 15th day of June, 2004.

BY ORDER OF THE HEARING EXAMINER

_____

James A. Buckley

[6] MEW and EMEC are authorized to file new rate schedules that impose the conservation surcharge on MPI and Domtar in compliance with the ordering paragraphs.